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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1940

No. 950

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO,
Petitioner,

vs.

A. CAMINETTI, JR., INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the Supreme Court of the State of California
and
BRIEF IN SUPPORT THEREOF.

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Subject Index

	Page
Petition for Writ of Certiorari to the Supreme Court of the State of California	1
A.	
Summary statement of matter involved	2
B.	
Questions presented	6
C.	
Statement of jurisdiction	6
D.	
Reasons relied upon for the allowance of the writ	8
Brief in Support of Petition for Writ of Certiorari	11
I.	
The decisions of the courts below	11
II.	
Jurisdiction	12
III.	
Statement of the case	13
IV.	
Specifications of error	16
V.	
Authorities and argument	17
VI.	
Federal question presented in time	27
Conclusion	35

Table of Authorities Cited

Cases

	Pages
Alabama Clay Products Co. v. City of Birmingham (Ala.), 148 So. 328	20
American Surety Co. v. Baldwin, 287 U. S. 156	33
Angelo Herndon v. State of Georgia, 295 U. S. 441	34
Coe v. Armour Fertilizer Works, 237 U. S. 413	23
Frick v. Norfolk etc. R. Co., 86 Fed. 725	20
Great Northern R. Co. v. Sunburst Oil & Ref. Co., 287 U. S. 358	33
Montana Co. v. St. Louis Mining etc. Co., 152 U. S. 160	25
Morgan v. United States, 304 U. S. 1	22
People ex rel. Alpha Portland Cement Co. v. Knapp, 230 N. Y. 48	25
Riverside & D. R. Cotton Mills v. Menefee, 237 U. S. 189	21
Roller v. Holly, 176 U. S. 398	21
Saunders etc. v. Shaw etc., 244 U. S. 317	32
Scott v. McNeal, 154 U. S. 34	31
Stanton v. State Tax Commission (Ohio), 159 N. E. 340	20
State of Missouri etc. v. Gehner, 281 U. S. 313	32
Stuart v. Palmer, 74 N. Y. 183, 30 Am. Rep. 289	25

Codes and Statutes

California Insurance Code:	
Division 1, Part 2, Chapter 1, Article 14 (as amended by Statutes of 1935, Chapter 291)	6
Division 2, Part 2, Chapter 9	2, 12
Section 1011	2, 3, 13, 17
Section 1012	17
Section 1040	3, 4, 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 28, 29
Judicial Code, Section 237 (b) as amended (U. S. C., Title 28, Section 344 (b))	6, 12
United States Constitution, Fourteenth Amendment	5, 6, 8, 15

Texts

12 C. J. 1203	23

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to the Supreme Court of the State of California.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

A.

SUMMARY STATEMENT OF MATTER INVOLVED.

The insurance company whose rights are involved in this proceeding is Physicians Life Insurance Company, and that concern is and for some years prior to August 15, 1940 was a corporation organized and existing pursuant to the provisions of Chapter 9, Part 2, Division 2 of the Insurance Code of the State of California, and during and at such times was solvent and was engaged in life and health and accident insurance business, and had approximately 18,000 members and policyholders, and during all of such time maintained its principal office and conducted its business in the City and County of San Francisco, State of California. (R. p. 21.)

On August 15, 1940 the Insurance Commissioner of the State of California, purporting to act under Section 1011 of the Insurance Code of such State, commenced a proceeding in the Superior Court of the State of California, in and for the City and County of San Francisco, against Physicians Life Insurance Company, and on that day the Court in which such action was commenced, upon the Commissioner's application therefor, without notice to the insurance company, made its order authorizing and permitting the Insurance Commissioner to summarily seize the assets and business of Physicians Life Insurance Company and to take exclusive possession, management and control thereof, and vesting title to the assets in such Commissioner. (R. pp. 15-17.)

On or about August 15, 1940, and after the seizure of the assets and the taking possession of the office

and business of such insurance company, the Insurance Commissioner, purporting to act under Section 1040 of the Insurance Code, removed or claimed to have removed the principal office of such insurance company from the City of San Francisco to the City of Los Angeles, and on August 16, 1940 (R. p. 3) applied to petitioner Court for an order directing its clerk to transmit all the papers filed therein and the proceeding to the clerk of the County of Los Angeles. (R. pp. 17-18.)

The petitioner Court denied such application and refused to make such order, giving as its reason therefor that Section 1040 of the Insurance Code did not authorize or empower the Insurance Commissioner to remove the principal office of the insurance company from the City and County of San Francisco to the City of Los Angeles.

As before stated, the principal office of Physicians Life Insurance Company was in the City and County of San Francisco, and Section 1011 of the Insurance Code requires that proceedings of the character brought by the Insurance Commissioner shall be commenced in the Superior Court of the county in which such principal office is maintained, and the petitioner Court, being of the opinion that the Insurance Commissioner had neither power nor authority to remove the principal office of the insurance company from San Francisco to Los Angeles, refused to make the order transferring the cause from petitioner Court to the Superior Court of Los Angeles County. (R. p. 22.)

It will be noted too that Section 1040 of the Insurance Code does not provide for notice of removal of office and the proceedings or of hearing thereon, either before or after such removal, and that not elsewhere in the laws of the State of California is such notice or hearing provided for.

On August 29, 1940 an original proceeding was commenced by respondent Commissioner in the Supreme Court of the State of California against the petitioner Court, in which it was prayed that petitioner Court be restrained from further proceeding in the pending action, and it was therein claimed that the principal office had been removed from San Francisco to Los Angeles, and that the demand for the transfer of the cause had been made and that following such removal the demand for the transfer of the cause from petitioner Court to Los Angeles should have been granted. (R. pp. 1-6.)

The Supreme Court of the State, as appears by its opinions, copied in the printed transcript filed herewith (R. pp. 32-42), held that Section 1040 of the Insurance Code authorized and empowered the Insurance Commissioner to remove the principal office of Physicians Life Insurance Company from San Francisco to Los Angeles, and that the things done by the Commissioner in this regard had effected such removal. The Court further held that by reason of such removal, upon the application of the Commissioner, it became the duty of the petitioner Court to direct its clerk to transmit the papers in such pro-

ceeding to the clerk of the County of Los Angeles. (R. pp. 32-42.)

There is no provision in the laws of the State of California requiring the insurance concern involved to be notified of the intention to remove the office or the proceedings, or of such removal, nor is there any provision of law under which hearing as to the propriety of such removal may be had, nor is any opportunity for hearing afforded the insurance company affected.

That notice of hearing or opportunity to be heard was not provided for by any statute was first called to the attention of the Supreme Court of the State, after the case was decided, by a petition for rehearing. (R. pp. 52, 62-63, 43-49.) In the petition for rehearing it was contended that Section 1040 of the Insurance Code, as construed by the Supreme Court, offended against the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Federal Constitution. The Supreme Court denied the petition for rehearing without opinion. (R. p. 65.)

This case was heard and considered in conjunction with three other cases of like or similar character. One of such cases involved the Mount Moriah Life Insurance Company and the facts of that case were substantially the same as the facts in this case, and the main opinion was filed in the case involving the Mount Moriah Life Insurance Company. (R. pp. 32-41.) The opinion rendered in this case adopted the opinion rendered in the *Mount Moriah Life Insurance Company* case. (R. p. 42.)

B.

QUESTIONS PRESENTED.

1. Is Section 1040 of the Insurance Code of the State of California, as construed by the Supreme Court of the State, repugnant to the Due Process clause of the Fourteenth Amendment of the Federal Constitution?

C.

STATEMENT OF JURISDICTION.

(a) The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended. (U.S.C., Title 28, Section 344 (b).)

(b) The statute of the State, the validity of which is involved, is found in Division 1, Part 2, Chapter 1, Article 14 of the Insurance Code of the State of California, as amended by the Statutes of 1935, Chapter 291, and being Section 1040 of the Insurance Code. That section reads:

> "At any time after an order is made under sections 1011 or 1016, the commissioner may remove the principal office of the person proceeded against to the City and County of San Francisco or to the city of Los Angeles. In event of such removal, the court wherein the proceeding was commenced shall, upon the application of the commissioner, direct its clerk to transmit all of the papers filed therein with such clerk to the clerk of the City and County of San Francisco or of the county of Los Angeles as the case may require. The proceeding shall thereafter be con-

ducted in the same manner as though it had been commenced in the county to which it had been transferred."

(c) The judgment sought to be reviewed and a reversal of which is asked was made and filed in the Supreme Court of the State of California on January 6, 1941 (R. p. 42), and the petition praying for rehearing of the cause was presented and filed on January 24, 1941 (R. p. 50), and on February 3, 1941 the petition for rehearing was denied without opinion. (R. p. 65.) The judgment of the Court became final on February 6, 1941, and this petition for writ of certiorari is presented and filed within the time provided by the rules of this Court. There is presented herewith a certified and printed copy of the record in the case, in which the judgment complained of was rendered.

(d) The claim that Section 1040 of the Insurance Code, as construed by the Supreme Court, violated the Due Process clause of the Fourteenth Amendment of the Federal Constitution was directly presented to the Supreme Court by the petition for rehearing.

It is because of this denial of constitutional right by the State Court that petitioner is compelled to ask this Court for certiorari, and petitioner's right so to come to this Court is supported by authorities cited in petitioner's brief accompanying this petition.

D.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

1. The decision of the Supreme Court of the State of California is in conflict with the Due Process clause of the Federal Constitution, for it so construes Section 1040 of the Insurance Code of the State of California that it withholds from and denies to Physicians Life Insurance Company that due process of law guaranteed to it by the Fourteenth Amendment to the Federal Constitution, for the construction given to such section by said Court empowers the Insurance Commissioner to remove the principal office of said company and the proceeding against it from the City and County of San Francisco to the County of Los Angeles, without according to the insurance company a hearing or an opportunity to be heard relative to the reasons or necessities or propriety of such removal, and denies to them an opportunity to show the evils, the damage and the injury to such company and its business which will result from such removal.

2. The matter in issue is of great public importance since it affects the business and property of 18,000 members and policyholders of the Physicians Life Insurance Company. The magnitude of the question involved further appears for the decision affects every insurance company, its members and policyholders operating in the State of California, now under conservatorship or in liquidation, or which may here-

after, under the Insurance Code, pass into the control of the Insurance Department of the State either in conservatorship or in liquidation.

The propriety of the application to this Court becomes more apparent when it is remembered that the question involved has never been decided by any Court, except in the instant case.

The decision of the two Courts are in direct conflict.

The decision of petitioner Court so construes Section 1040 as to give it effective operation without offending due process, while the decision of the Supreme Court of the State gives to the section a construction which denies to the insurance company the due process which is assured to it by the constitutional provision.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of California, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket S. F. No. 16,480, A. Caminetti, Jr., Insurance Commissioner of the State of California, Applicant, v. Superior Court of the State of California in and for the City and County of San Francisco, Respondent, and that the decree of said Court may be reversed by this Honorable Court, and that your petitioner may have such other and further

relief in the premises as to this Honorable Court may seem meet and just.

Dated, San Francisco, California,
April 11, 1941.

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO.
By FRANK T. DEASY,
Presiding Judge,
Petitioner.

U. S. WEBB,
HESTER WEBB,
Counsel for Petitioner.